

New and Restyled Civil and Criminal Forms

- **Sworn Certification of Inventories Before Magistrate Judges:** For decades, the national search and seizure warrant forms (AO 93, AO 93A, AO 109) have required the officer who executes a warrant to swear before the magistrate judge who issued the warrant as to the accuracy of the inventory of property taken. The Working Group discovered, though, that Fed. R. Crim. P. 41(f)(1) mandates only that the warrant and inventory be “verified” and “returned” to the designated judge. There is no requirement in the rule or elsewhere that the return and inventory be sworn to before a judge.¹ The Judicial Conference Advisory Committee on Criminal Rules and the AO’s Magistrate Judges Advisory Group were consulted on the matter and support amending the forms to reflect that fact.
- **Delayed-Notice Option Added on Warrant Forms:** Delayed-notice checkboxes have been added to all relevant warrant and warrant application forms (AO 93, AO 93A, AO 102, AO 104, AO 106, AO 109). This change will allow the agent to include a request for delayed notice with the request for the warrant. It will also ensure that court staff are aware that delayed notice has been requested so that they can record it in the InfoWeb delayed-notice tracking system.
- **Changes to Forms Relating to Appearance Bonds:** Forms AO 98 and AO 98A have been consolidated, and all personal identifiers have been removed in light of the privacy protections of Fed. R. Crim. P. 49.1. Instead, the personal identifiers have been moved to two newly created information sheets — AO 100A “Bail Information Sheet” and AO 100B “Surety Information Sheet” — which are not to be included in the public case file unless redacted or under seal.
- **Illustrative Rules Forms:** The caption style on all forms has been revised to comply with illustrative Civil Rules Form 1 as restyled in 2007. (It appears in the “Appendix of Forms” accompanying the [Federal Rules of Civil Procedure](#).) Also, the content of several AO forms was restyled based on the 2007 illustrative forms:
 - ▶ AO 398 Notice of a Lawsuit and Request to Waive Service of a Summons (cf. Form 5)
 - ▶ AO 399 Waiver of the Service of Summons (cf. Form 6)
 - ▶ AO 440 Summons in a Civil Action (cf. Form 3)
 - ▶ AO 441 Summons on a Third-Party Complaint (cf. Form 4)
 - ▶ AO 450 Judgment in a Civil Action (cf. Forms 70 and 71)

¹ The basic procedures governing the return of search warrants and the preparation of inventories of property seized have not substantively changed since 1946, when the original Fed. R. Crim. P. 41 took effect. The requirement that inventories be sworn before a judge seems to be derived from 18 U.S.C. former §§ 611-633 (June 15, 1917, c. 30, Title XI, 40 Stat. 228), the statute that governed the issuance of federal search warrants from 1917 to 1946. On its face, former § 623 required the officer who prepared the inventory to swear before the judge or commissioner at the time of the return. But in 1948, Congress repealed that statute, replacing it with the specific provisions of Fed. R. Crim. P. 41(d).

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- **Merger of Form AO 466A and AO 466B:** Form AO 466B has been merged into form AO 466A “Waiver of Rule 5 & 5.1 Hearings (Complaint or Indictment),” and form AO 466B has been eliminated.
- **Forms Eliminated or Updated:** Forms AO 156 and AO 456 have been eliminated, and form AO 133 was updated to reflect recent statutory changes.

In addition to restyling existing forms, the Working Group also supplemented the national inventory of civil and criminal forms with a few new entries:

- **New Civil Subpoena Forms:** There are now three civil subpoena forms:
 - ▶ AO 88 Subpoena to Appear and Testify at a Hearing or Trial in a Civil Action
 - ▶ AO 88A Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action
 - ▶ AO 88B Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises
- **New Tracking Warrant Forms:** After extensive evaluation and study during the last two years, the Group has created three national tracking warrant forms.
 - ▶ AO 102 Application for a Tracking Warrant
 - ▶ AO 103 Order Requiring Assistance in Executing a Tracking Warrant
 - ▶ AO 104 Tracking Warrant

The Department of Justice has raised concerns that these forms might be used in situations that it deems inappropriate (e.g., government acquisition of cell phone location information). It notes that whether certain objects are “tracking devices” within the meaning of Fed. R. Crim. P. 41 and 18 U.S.C. § 3117(b) is not yet settled in the case law (see, e.g., *In the Matter of an Application of the United States*, Misc. No. 08-308, 2008 WL 5082506 (E.D.N.Y. Nov. 26, 2008)). The Working Group believes that it is appropriate to issue the forms now because courts have asked for them and they are clearly useful and suitable in a majority of instances. The Working Group takes no position on any substantive legal issue and expresses confidence that courts will authorize the use of the forms only in situations that a judge deems appropriate. The Advisory Committee on Criminal Rules is being asked to discuss the concerns of the Department of Justice and any others at its next meeting, on April 6-7, 2009.

- **New Long Version of *In Forma Pauperis* Application Form:** Also at the request of judges, a new longer *in forma pauperis* application form has been created for use in district court proceedings where form AO 240 is deemed insufficiently detailed. This longer form is based on official Form 4 of the Federal Rules of Appellate Procedure, used in connection with an appeal. Form AO 240 may continue to be used when a court prefers a shorter version.

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- **New Arrest Warrant Forms:** In addition to the main arrest warrant form (AO 442) and the two arrest warrants used in connection with violation notices (AO 234 and AO 238), there are now three arrest warrants for witnesses:
 - ▶ AO 443 Warrant for the Arrest of a Witness or Material Witness in a Pending Criminal Case
 - ▶ AO 444 Warrant for the Arrest of a Witness in a Grand Jury Proceeding
 - ▶ AO 445 Warrant for the Arrest of a Witness in a Civil Action